



13-CV-00637-CMP

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AT SEATTLE
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WESTERN DISTRICT OF WASHINGTON
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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA *ex*
rel. TONY MYHRE, an individual,

Plaintiff,

vs.

SECURITAS SECURITY SERVICES USA,
INC., a Delaware Corporation.

Defendant.

No. **C13-0637** *JUR*

QUI TAM COMPLAINT FOR
VIOLATION OF THE FEDERAL
FALSE CLAIMS ACT AND FOR
RETALITORY DISCHARGE

DEMAND FOR JURY TRIAL

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**FILED IN CAMERA AND SEALED
PER 31 USC § 3730 (b)(2)**

COMPLAINT - 1

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ORIGINAL

COMES NOW the United States of America, by and through *qui tam* Relator, Tony Myhre, represented by SEATTLE WHISTLEBLOWER ATTORNEYS Mark Walters of the WALTERS LAW FIRM PLLC and Daniel DeLue of FERRING & DELUE, LLP, and for his causes of action against defendant, Securitas Security Services USA, Inc. ("Securitas"), states and alleges as follows:

I. INTRODUCTION

1. *Qui tam* Relator, Tony Myhre, brings this action on behalf of the United States of America and himself to recover damages and penalties from Securitas under the False Claims Act.

2. Securitas is a U.S. corporation and subsidiary to Securitas AB, a Swedish company, that provides private security across the world. Securitas AB has approximately 300,000 employees across several continents.

3. Securitas has over 650 branch managers and more than 90,000 security officers in the United States. Securitas USA's core business is security services. Its main services include specialized guarding, mobile security services, monitoring, consulting and investigations. (See <http://www.securitas.com/us/en/About-Securitas/>).

4. With respect to this Complaint, Securitas provides security and fare enforcement services to the Central Puget Sound Regional Transit Authority ("Sound Transit"). Securitas is

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1 contracted to provide uniformed trained security guards and personnel to guard and protect the
 2 public and the Sound Transit infrastructure and to ensure the payment of fares. Securitas invoices
 3 Sound Transit government agencies monthly for providing qualified trained security guards and
 4 personnel; the training is a material requirement of the contract.

5 5. Securitas hired Mr. Myhre as a Project Manager and directed him to conduct an
 6 audit of Securitas' performance and billing under the contract, including training provided and
 7 billed to Sound Transit. A true and correct copy of a version of this audit is attached as **Exhibit**
 8 **1**. Mr. Myhre's audit revealed that Securitas had been billing Sound Transit for untrained and
 9 undertrained security guards and personnel in violation of the contract requirements.

10 6. Mr. Myhre was terminated for his audit conclusions and his recommendations to
 11 bring Securitas into compliance, and for his refusal to dilute his conclusions and
 12 recommendations to the satisfaction of Securitas.

13 7. The training of the personnel and security guards was a material term of the
 14 contract:
 15

16 **3.5 (F). Training.** The Contractor is to develop a comprehensive training package that
 17 meets at least the minimum requirements set forth below. Training outlines for required
 18 training must be approved by the Chief Security Officer prior to instruction. All training
 19 must be tested and the records of the results by [sic] made available for Sound Transit's
 20 inspection and auditing. Contractor shall provide, at the Contractor's expense, all training
 21 required under this contract, and shall provide documentation of training for each
 22 individual before being assigned to the Sound Transit Account.

23 COMPLAINT - 3

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1 **Exhibit 2**, Contract, page 51. Moreover, the labor rates being billed by Securitas was to include
 2 the cost of training:

3 **2.10 COMPENSATION:**

4 D. Contract billing rate is all-inclusive and Sound Transit shall not pay for any
 5 additional invoiced costs. **The billing rate shall include all costs necessary to**
 6 **perform the services, including such costs as training**, background checks,
 materials, supplies, administration, and any other costs.

7 See **Exhibit 2**, Contract, pages 8-9. (Bold emphasis added).

8 8. "[A] contractor who knowingly fails to perform a material requirement of its
 9 contract...yet seeks or receives payment as if it had fully performed without disclosing the non-
 10 performance, has presented a false claim to the Government and may be liable therefore." *United*
 11 *States ex rel. Pickens v. Kanawha River Towing, Inc.*, 916 F. Supp. 702, 707 (S.D. Ohio 1996),
 12 *aff'd on other grounds*, 194 F.3d 1314 (6th Cir. 1999); *United States ex rel. Fallon v. Accudyne*
 13 *Corp.*, 921 F. Supp. 611 627 (W.D. Wis. 1995). See also *United States v. TDC Mgmt. Corp.*, 24
 14 F.3d 292, 296 (D.C. Cir. 1994) (liability could attach as a matter of law under the False Claims
 15 Act as a result of the failure to disclose material noncompliance) and *Imperial Meat v. United*
 16 *States*, 316 F.2d 435 (10th Cir. 1963) (finding contractor criminally liable for providing inferior
 17 grade of meat notwithstanding that its invoice made no representation concerning the grade of
 18 meat). A demand for payment by a Government contractor constitutes an implicit representation
 19 that the contractor complied with the requirements of the Government contract. *Pickens*, 916 F.
 20

21 COMPLAINT - 4

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1 Supp. At 707; *Fallon*, 921 F.Supp. at 627; *but see United States ex rel. Joslin v. Community*
 2 *Home Health*, 984 F. Supp. 374, 375-378 (D. Md. 1997).

3 9. Securitas submitted monthly false claims for untrained and undertrained security
 4 guards and personnel when it was a material requirement of the contract that all guards and
 5 personnel be trained to the contractual training standards. Securitas also failed to timely audit
 6 the accounts beginning in 2008.

7 10. In making the false claims for compensation for undertrained and untrained
 8 guards and personnel as if they had been trained, Securitas also made "implied false claims" and
 9 such violations of the False Claims Act are actionable in order to protect the public coffers from
 10 some of the most outrageous and intentional false billing schemes. For the purposes of the
 11 False Claims Act, an implied representation on an invoice that work has been
 12 completed pursuant to the contract requirements may constitute a false claim for payment.
 13 *United States ex el. Augustine v. Century Health Services, Inc.*, 289 F.3d 409 (6th Cir. 2002);
 14 *BMV-Combat Systems Division of HARSCO Corp. v. United States*, 38 Fed. Cl. 109, 124 (Cl. Ct.
 15 1997), *citing Ab-Tech Constr., Inc. v. United States*, 31 Fed. Cl. 429, 433-34 (1994), *aff'd*, 5
 16 F.3d. 1084 (Fed. Cir. 1995); *Daff v. United States*, 31 Fed. Cl. 682, 695 (1994), *aff'd*, 8 F.3d
 17 1566 (Fed. Cir. 1996).
 18

19 II. PARTIES

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 21 COMPLAINT - 5

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1 11. Plaintiff Tony Myhre is a married man. Mr. Myhre is a resident of the state of
2 Washington.

3 12. A non-party, but relevant entity, is The Central Puget Sound Regional Transit
4 Authority (commonly known as Sound Transit) because Sound Transit entered into a contract
5 with Securitas. Sound Transit provides mass transit services to the public throughout the urban
6 and suburban areas of the greater metropolitan centers of Tacoma, Seattle, and Everett through
7 rapid transit buses, Central Link Light Rail, Tacoma Link, Light Rail, and Sounder commuter
8 trains. Sound Transit receives significant federal funds.

9 13. Defendant Securitas Security Services USA, Inc. ("Securitas") is a United States
10 corporation organized under the laws of Delaware and does business in the state of Washington.
11 An organizational chart of Securitas and Puget Sound Transit is attached hereto as **Exhibit 3**.

12 14. The Washington Registered Agent for Securitas is National Registered Agents,
13 Inc., 1780 Barnes Blvd., Tumwater, Washington 98512.
14

15 III. JURISDICTION AND VENUE

16 15. These claims arise under the False Claims Act, 31 U.S.C. §§ 3729-3732 *et seq.*
17 and common law.

18 16. The Court has jurisdiction under § 31 U.S.C. 3732(a) and 28 U.S.C. §§ 1331 *et*
19 *seq.*, as the case arises under the laws of the United States.
20

21 COMPLAINT - 6

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17. There was not, prior to the filing of the original Complaint, any “public disclosure,” as that term is defined in the False Claims Act, 31 U.S.C. § 3730(e)(4)(A), on any of the allegations or transactions upon which this action is based.

18. Relator has direct and independent knowledge and information of the allegations set out in this Complaint. Prior to filing this action, Relator voluntarily provided all such information, together with supporting documentation, to the United States. Relator is the “original source” as the term is used in the False Claims Act, 31 U.S.C. § 3730(e)(4)(B).

19. Venue is proper in the United States District Court for the Western District of Washington at Seattle pursuant to 28 U.S.C. §1391(b) and (c) and 31 U.S.C. §3732 (a) because Securitas conducts business in Washington. The events or omissions giving rise to the Plaintiff’s claims occurred in this District and Securitas, and Sound Transit resides and conducts business in this District.

20. Sound Transit transacts business in this District and acts proscribed by 31 U.S.C. §3729 occurred in this District.

IV. FACTS

A. Sound Transit Funding-Federal Taxpayer Dollars

21. Sound Transit is funded by four tax sources, three of which are State: (1) Sales and use tax of 0.9% (increased from 0.4% by Proposition 1, effective April 1, 2009); (2) Motor

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1 vehicle excise tax (MVET) of 0.3%; and (3) Rental car tax of 0.8%. These three sources are
 2 projected to generate about \$12.6 billion during the period of 2009-2023. The fourth source of
 3 funding is United States taxpayers through federal grant funding.

4 22. Sound Transit will receive about \$3.16 billion in federal grant funds from 2009
 5 through 2023. Approximately \$1.9 billion will be from three discretionary grants from the
 6 Federal Transit Administration (FTA). These include an existing \$500 million Full Funding
 7 Grant Agreement (FFGA) for the Initial Segment/Airport Link segment of the Light Rail, an
 8 existing \$813 million FFGA for the University Link segment of the Light Rail, and an assumed
 9 \$600 million FFGA for a project in Sound Transit. The remainder of federal taxpayer dollars
 10 comes from FTA formula grants and other competitive grant programs. See **Exhibit 4:**
 11 [http://www.soundtransit.org/Documents/pdf/about/financial/2010/2010_Financial_Plan_4-8-](http://www.soundtransit.org/Documents/pdf/about/financial/2010/2010_Financial_Plan_4-8-2010.pdf)
 12 [2010.pdf](http://www.soundtransit.org/Documents/pdf/about/financial/2010/2010_Financial_Plan_4-8-2010.pdf).

13
 14 23. The Sound Transit-Securitas contract clarifies that Securitas will be paid with
 15 United States federal taxpayer dollars:

16 **2.39 APPLICABILITY OF FEDERAL GRANT CONTRACT**

17 A. This procurement may be subject to one or more financial assistance contracts
 18 between Sound Transit and the U.S. Department of Transportation, which
 19 incorporate the current FTA Master Agreement and Circular 4220.1 E as
 20 amended. U.S. Department of Transportations' level of financial assistance may
 be between zero and eighty percent (0-80%). The Consultant is requirement

21 COMPLAINT - 8

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1 comply with all terms and conditions prescribed for third party contracts in these documents.

2 B. Federal laws, regulations, policies and administrative practices may be
3 modified or codified after the date this Agreement is established and may apply to
4 this Agreement. To assure compliance with changing federal requirements,
Contract Award indicates that the Consultant agrees to accept all changed
requirements that apply to this Agreement.

5 **Exhibit 2**, Contract, pages 31-32.

6 **B. Contract: Securitas and Sound Transit**

7 24. Securitas has worked closely with Sound Transit and area law enforcement since
8 2005 to provide security. Approximately 100 uniformed Securitas officers currently patrol train
9 and bus facilities on foot and in vehicles, monitor transit station activity, and perform a range of
10 customer service and administrative services. See [http://www.securitas.com/us/en/Customer-](http://www.securitas.com/us/en/Customer-Segments/Public-Transportation/Commuting-in-Seattle/)
11 [Segments/Public-Transportation/Commuting-in-Seattle/](http://www.securitas.com/us/en/Customer-Segments/Public-Transportation/Commuting-in-Seattle/) See **Exhibit 5**.

12 25. Securitas won the public bid process to be a security firm providing security to
13 Sound Transit. The bid was presented on April 28, 2008. See **Exhibit 6**.

14 26. Securitas entered a contract with Sound Transit (the "Contract") on June 27, 2008
15 to be one of many security providers for Sound Transit. See **Exhibit 2**.

16 27. The Contract specified that the Securitas billing rate would include the cost of
17 training:
18

19 **2.10 COMPENSATION:**

20
21 COMPLAINT - 9

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D. Contract billing rate is all-inclusive and Sound Transit shall not pay for any additional invoiced costs. **The billing rate shall include all costs necessary to perform the services, including such costs as training,** background checks, materials, supplies, administration, and any other costs.

See **Exhibit 2**, Contract, pages 8-9. (Bold emphasis added). The specific training under the Contract pertained to basic, advanced and supervisory roles, and each designation justified a different billing rate. The vast majority of training was to be performed prior to Securitas placing the guards in the field.

28. Section 3.5 of the Contract covered "Skills and Qualifications (Amended)" and indicated there would be both comprehensive training and record-keeping of such training for audit purposes:

F. Training

The Contractor is to develop a comprehensive training package that meets at least the minimum requirements set forth below. Training outlines for required training must be approved by the Chief Security Officer prior to instruction. All training must be tested and the records of results by made available for Sound Transit's inspection and auditing. Contractor shall provide, at the Contractor's expense; all training required under this contract, and shall provide documentation of training for each individual before being assigned to the Sound Transit Account.

Prior to Assignment all personnel assigned to the Sound Transit Account must have a current First Aid; CPR and AED certification. The Contractor will be responsible to ensure and coordinate refresher training as necessary.

The training requirement schedule shall be amended due to the accelerated contract commencement schedule; the Contractor shall not be required to complete all preassignment training prior with the exception of, current First Aid; CPR and AED

COMPLAINT - 10

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certification, to the RFP specified date of September 1, 2008. Every effort shall be made by the Contractor to complete all required training at the earliest possible date.

....

Basic Security Officer Training -40 hours

1. Nature and Role of Private Security Officers

a. Security Awareness

(1) Private Security Officers and the Criminal Justice System

(2) Information Sharing

(3) Crime and Loss Prevention

b. Legal Aspects of Private Security

(1) Evidence and Evidence Handling

(2) Use of Force and Force Continuum

(3) Court Testimony

(4) Incident Scene Preservation

(5) Equal Employment Opportunity (EEO) and Diversity

(6) State and Local Laws

c. Security Officer Conduct

(1) Ethics

(2) Honesty

(3) Professional Image

COMPLAINT - 11

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1 2. Observation and Incident Reporting

2 a. Observation Techniques

3 b. Note Taking

4 c. Report Writing

5 d. Patrol Techniques

6 3. Principles of Communications

7 e. Interpersonal Skills

8 f. Verbal Communications Skills

9 g. Customer Service and Public Relations

10 h. Conflict Resolution Awareness

11 4. Principles of Access Control

12 i. Ingress and Egress Control

13 j. Electronic Security Systems

14 5. Principles of Safeguarding Information

15 k. Proprietary and Confidential

16 6. Emergency Response Procedures

17 l. Critical Incident Response

18 m. Evacuation Processes

19 7. Life Safety Awareness

20 n. Safety Hazards in the Workplace/Surroundings

21 o. Fire Prevention

22 COMPLAINT - 12

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1 p. Hazardous Materials Safety

2 q. Occupational Safety and Health Requirements

3 **Advanced Security Officer Training -40 Hours**

4 1. Sound Transit Orientation and Policies -2 hours

5 a. Overview of Sound Transit

6 b. General Orders for Security Officer

7 c. Drug and Alcohol Policy

8 d. Media Relations

9 e. Smoking and Photography Policies

10 2. Unlawful Bus (Transit) Conduct RCW 9.91.025 Orientation -1 hour

11 3. Job Assignments; Post Locations; and Post Orders Overview-8 hours

12 4. Railroad Safety

13 a. 49 CFR 239 Training -2 hours

14 b. BNSF Safety Course -2 hours

15 c. Fire Extinguisher Course -1 hour

16 5. Defensive Driving Training -8 hours

17 6. Traffic Control and Parking Lot Security -4 hours

18 7. Sound Transit Security Incident Reporting -2 Hours

19 8. NIMS /ICS -IS800 Course -2 hours

20 9. Terrorism Awareness Training -8 hours

21 10. National Transit Institute System Security Awareness for Transit Employees

22 COMPLAINT - 13

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1 a. Suspicious Incident Recognition and Reporting

2 b. Event Response Awareness

3 Note: Those individual assigned to a Bike Patrol must complete the approved LEBA or
4 IPMBA Security Patrol Bike Course prior to assignment.

5 **First Week Assignment OJT**

6 Upon Completion of the Basic and Advanced Security Officer Training the Contractor
7 will provide 32 hours of On-the-job Training specific to that individual assignment.

8 1. First Day -8 hours

9 a. General Orders and Expected Conduct Review

10 b. Post Order in-depth review

11 c. Security Sweeps

12 d. Facilities Maintenance Procedures

13 e. Shadow Trainer (Right Seat)

14 2. Second Day -8 hours

15 a. Shadow Trainer (Right Seat)

16 3. Third Day -8 hours

17 b. OJT -Trainer Shadowing (Left Seat)

18 4. Fourth Day -8 hours

19 a. OJT -Trainer Shadowing (Left Seat)

20 b. Shift Supervisor review

21 **Supervisor Training**

22 COMPLAINT - 14

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Supervisors must have completed the Basic and Advance Security Officer. In addition prior to assignment as a supervisor the assigned individual must undergo 8 hours of training covering:

1. The Role of a Supervisor
2. Standards of Conduct
3. Uniform and Grooming Standards for all Officers

Within 60 days of assignment as a Supervisor; the assigned individual must undergo a minimum of 32 hours of training covering:

1. Coaching and Counseling
2. Managing Employee Safety
3. Managing Performance

29. Securitas provided services to Sound Transit in 2008, 2009, 2010 and 2011 and was contractually subject to the training, record keeping and audit requirements. No audits were performed in those years as required under Paragraph 3.7 of the Contract. Securitas made no efforts to achieve the training required under the Contract, yet continued to bill out at rates that included the costs of training.

30. Securitas' services were expanded after uniformed guards for another one of Sound Transit's security guard contractors, Olympic Security Services of Tukwila, were captured on surveillance video watching as a 15-year-old girl was beaten and robbed by a group of teens in Seattle's downtown transit tunnel. The Olympic Security Services' guards were following standing orders to "observe and report," and King County Sheriff officials agreed with

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1 the guards' actions, stating that it's not safe for unarmed civilians to intervene in violent
 2 situations. However, King County Executive Dow Constantine disagreed, saying he expected
 3 more from Olympic Security Services. Mr. Constantine directed Metro, King County's transit
 4 agency, to hire another company to provide protection in the downtown transit tunnel – one that
 5 would provide guards who would do more than "observe and report." Securitas took over in
 6 March 2011.

7 31. On March 24, 2011, the Sound Transit Board approved a \$14,000,000 contract
 8 amendment with Securitas for unarmed security services (contract not to exceed \$28,000,000).
 9 See **Exhibit 7**.

10 <http://www.soundtransit.org/documents/pdf/about/board/motions/2011/Motion%20M2011->
 11 [26.pdf](#). Securitas was to provide these services pursuant to the Contract and Modifications.

12 32. The Contract Amendment specified: "All other terms and conditions remain
 13 unchanged." A true and accurate copy of the contract is attached hereto as **Exhibit 2**.

14 33. Modifications subsequently included increases in billing rates for additional
 15 training related to:
 16

17 a. Add to billing rates:

- 18 i. Fare Enforcement Officer: \$24.38/hour
- 19 ii. SUV patrol vehicle: \$2,355.69/month
- 20 iii. Fare Enforcement Training for Outside Entities: \$432 per trainee

21 COMPLAINT - 16

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See **Exhibit 8**, December 1, 2009 Modification No. 1.

b. Billing rate adjustments for 2010:

- i. Account Manager: \$6,085.73/month
- ii. Operations Assistant: \$5,130.67/month
- iii. Supervisor: \$28.22/hour
- iv. Fare Enforcement Officer: \$25.36/hour
- v. Dispatcher: \$26.04/hour
- vi. Security Officer: \$24.62/hour

See **Exhibit 9**, January 1, 2010 Modification No. 2.

c. MOAB training. See **Exhibit 10**, July 30, 2010 Modification

d. Billing rate adjustments for 2011:

- i. Account Manager: \$6,328.40/month
- ii. Operations Assistant: \$5,335.20/month
- iii. Supervisor: \$29.34/hour
- iv. Fare Enforcement Officer: \$26.37/hour
- v. Dispatcher: \$27.08/hour
- vi. Security Officer: \$25.60/hour

See **Exhibit 11**, January 1, 2011 Modification No. 5.

e. Baton use and training. Revised rates:

- i. Supervisors: \$29.62/hour
- ii. Dispatch: \$27.36/hour
- iii. Security Officers: \$25.88/hour
- iv. Fare Enforcement: \$26.65/hour

See **Exhibit 12**, October 1, 2011 Modification No. 7.

f. 2012 Billing rate adjustments and New Overtime Billing Rates:

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- i. Account Manager: \$6,512.13/month
- ii. Operations Assistant: \$5,491.20/month
- iii. Supervisor: \$30.47/hour; Overtime: \$42.24/hour
- iv. Dispatch: \$28.15/hour; Overtime: \$39.25/hour
- v. Security Officer: \$26.63/hour; Overtime: \$37.10/hour
- vi. Fare Enforcement Officer: \$27.41/hour; Overtime: \$38.20/hour

See **Exhibit 13**, February 1, 2012 Modification No. 8.

34. Additional terms of the Contract include and recognize sources of federal funding and compliance:

2.36 FALSE OR FRAUDULENT STATEMENTS AND CLAIMS

A. The Consultant recognizes that the requirements of the Program Fraud Civil Remedies Act of 1986, as amended, 49 U.S.C. §§ 3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this Agreement. Accordingly, by signing this Agreement, the Consultant certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, or it may make pertaining to the covered Grant Agreement, Cooperative agreement, Contract or services. In addition to other penalties that may be applicable, the Consultant acknowledges that if it makes a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986, as amended, on the Consultant, to the extent the Federal Government deems appropriate.

B. The Consultant also acknowledges that it if makes a false, fictitious, or fraudulent Claim, statement, submission, or certification to the Federal Government in connection with an urbanized area formula project financed with Federal assistance authorized by 49 U.S.C. § 5307, the Government reserves the right to impose on the Consultant the penalties of 18 U.S.C. § 1001, 31 USC §§ 3801, et seq., and 49 U.S.C. § 5307(n)(1), to the extent the Federal Government deems appropriate.

C. The Consultant agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the

COMPLAINT - 18

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clauses shall not be modified, except to identify the subconsultant who will be subject to the provisions.

Exhibit 2, Contract, pages 30-31.

35. Additionally, the Contract includes any and all FTA terms:

2.40 INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS

A. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1 E, (<http://www.fta.dot.gov/laws/circulars/legreg4063.html>) as amended and the Master Grant Agreement (<http://www.fta.dot.gov/documents/13-Master.doc>), are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Consultant shall not perform any act, fail to perform any act, or refuse to comply with any Sound Transit request that would cause Sound Transit to be in violation of the FTA terms and conditions.

B. The FTA Master Agreement obligates Sound Transit to incorporate certain provisions into this Agreement and any lower tier subcontracts at any level and to take appropriate measures to ensure that Consultant and its lower tier subconsultants at any level comply with certain applicable requirements set forth in the Master Agreement. The FTA Master Agreement is hereby incorporated by reference into this Agreement, and Consultant shall comply with all such requirements.

C. Copies of the FTA Master Agreement are available from Sound Transit.

Exhibit 2, Contract, page 32.

C. Securitas-Sound Transit Key Management

36. At the time the Contract was executed, Celia Kupersmith was Deputy CEO of Sound Transit and Ken Cummins was Sound Transit's Chief Security Officer.

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37. In a meeting in March 3, 2011 to the Sound Transit Citizen's Oversight Panel, Ken Cummins indicated:

Chief Security Officer Ken Cummins explained that he is responsible for the transit security contract with Securitas as well as construction security, incident response and service interruptions, information sharing and reporting, emergency preparedness and threat assessments as well as federal and state oversight compliance. The Securitas contract provides 95 FTE positions in two units: security (blue shirts) and fare enforcement (white shirts). The 77 security officers receive 80 hours of training over and above the 40 hours required for state certification; they also receive 16 hours of ongoing training annually.

The officers are deployed to 11 stationary posts on Sounder, Link and STX locations: Everett, Union Station, Beacon Hill, Operation & Maintenance Facility, Tukwila International Boulevard, Tacoma Dome, Kent, Auburn, Federal Way and SeaTac. One officer rides Tacoma Link, 6 fare enforcement officers work in pairs throughout the system, two dispatch officers and one supervisor are located at Union Station, three roving officers and one supervisor in cars are responsible for a northern, central and southern zones. The Securitas staff turnover was just 8% in 2010, compared to 150% to 300% in the industry as a whole. Contract expenditure is 1.6% below what was projected in 2008 for this time period. A rising demand for service has added a net 470 hours per week for fare enforcement and stationary and roving patrols, from 2,979 hours in July 2008 to 3,998 hours in January 2011.

See Exhibit 14.

D. Securitas Fines – Failure to Train & Equip Guards Provided to King County Metro

38. Shortly after Sound Transit hired Securitas, Securitas was fined \$14,000 for three separate citations by the Washington State Department of Labor and Industries for failing to properly train and equip Securitas guards stationed in the downtown transit tunnel for King

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1 County Metro. Securitas has a contract with King County in addition to the contract with Sound
 2 Transit. The citations were all classified as "serious" violations by Labor and Industries and
 3 were for violations of WAC 296-800-14020, WAC 296-800-14025, and WAC 296-800-16005.
 4 True and accurate copies of the violations are attached hereto as **Exhibit 15**.

5 39. Labor and Industries affirmed the citation on appeal, and Securitas then appealed
 6 to the Board of Industrial Insurance Appeals (BIIA). Under the authority of the BIIA, the parties
 7 entered into an agreed order vacating two of the citations and reducing the third violation down
 8 to \$3,300 from \$5,500. **Exhibit 16**.

9 **E. Tony Myhre Hired by Securitas to Perform an Audit**

10 40. On June 13, 2011, Securitas hired Mr. Myhre as a Project Manager:

11 It is a pleasure to hereby confirm our contingent offer to you as Project Manager for
 12 Securitas Security Services, USA ("Securitas USA"), working on the Sound Transit
 13 Account for an anticipated duration of 12 months with a tentative start date of June 14,
 14 2011.

15 *Sees Exhibits 17 and 18 (Project Manager Job Description).*

16 41. Specifically, Mr. Myhre was hired to perform tasks requested by Kenneth
 17 Cummins, the Chief Security Officer of the Central Puget Sound Regional Transit Authority.
 18 Securitas then commissioned an Audit (the scope of work was defined by Ken Cummins) to
 19 determine the current status of the contract security services program being delivered to Sound
 20 Transit under contract by Securitas. One of the reasons Securitas hired Mr. Myhre was to audit

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1 the current training program (to understand the deficiencies in the program and to ensure that the
 2 'best and recommended' industry practices were being adopted). The audit was also being
 3 performed to restructure the training program in order to address gaps in achieving training
 4 requirements and to bring the training program into contractual compliance. While a draft
 5 training outline was provided by Mr. Myhre, items 13 through 19 in the scope of work were
 6 never completed because he was terminated. (See **Exhibit 22**, pg. 3):

- 7
- 8 1. Introduction to Sound Transit and Vision of the ST Security Department
- 9 2. Liaise with Sound Transit operations (Sounder, Central Link, Tacoma Link, ST Bus);
Customer Services; Customer Accessibility; Facilities; and Communications to
understand needs and develop a needs assessment.
- 10 3. **Audit current training program.**
- 11 4. Audit current post orders.
- 12 5. Develop Gap Analysis.
- 13 6. Research best and recommended practices (ASIS and APTA + other Transit
Agencies).
- 14 7. Update Gap Analysis.
- 15 8. Management Review.
- 16 9. Develop Training Program Outline.
- 17 10. Develop and Update Post Orders to reflect needs assessment and address gap
analysis.
- 18 11. Update Training Program Outline based on Post Order Update.
- 19 12. Audit Training courses available currently (FTA, NTI, APTA, ASIS, BNSF,
Securitas, others) that address needs identified in Training Program Outline.
- 20 13. Develop additional training courses as needed.
- 21 14. Review training outline and materials.
- 22 15. Develop Field Training / Mentoring / Train the Trainer Programs.

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1 16. Finalize Training Program / Develop certification / testing criteria.

2 17. Deliver the Training.

3 18. Audit Training Results.

4 19. Update Program.

5 42. This initial effort was estimated to be 80 weeks of work.

6 **F. Audit of Training**

7 43. Mr. Myhre began performing his audit in June 2011. Almost immediately, he
8 came to understand that many deployed Securitas security guards and personnel had not been
9 trained in the entire course of contractually required 'pre-assignment training' and/or lacked
10 critical training. He ascertained these shortcomings by reviewing security guard employee files
11 and interviewing management, supervisors, account managers, operations assistants and security
12 guards.

13 44. Paragraph 3.5 of the Contract required both preassignment and post assignment
14 training (to be completed at the earliest possible date):

15 [T]he Contractor shall not be required to complete all preassignment training prior with
16 the exception of, current First Aid; CPR and AED certification, to the RFP specified date
17 of September 1, 2008. Every effort shall be made by the Contractor to complete all
18 required training at the earliest possible date.

19 Contractual training mandates were more exhaustive for Security Officers and Supervisors. *See*
20 **Exhibit 2**, Contract, pgs. 51-54. However, the contract required a base level of training for all

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guards and personnel assigned to the Sound Transit Account, including the Account Manager and the Operations Assistants.

45. Mr. Myrhe confirmed his understanding of the training requirements, pre and post assignment, on July 11, 2011:

From: Myhre, Tony
Sent: Monday, July 11, 2011 17:03 PM
To: Cummins, Kenneth
CC: Draveling, David
Subject: Training Programs question

Now that I've had a chance to break the training programs quite a bit, I've come up with some questions, particularly as it relates to Sound Transits expectations related to training delivery. This is based on the contract language I was provided with by Ken, compared to the training outlines and programs I've reviewed.

Please let me know if it's easier just to have a quick meeting about this. Thanks.

1. The 40 hour basic security officer training program is delivered to ALL new hire security officers, irrespective to their final placement.

2. The 40 hour advanced security officer training program is delivered to ALL new security officers, irrespective to their final placement.

3. The Fare Enforcement Officer training program is separate from the Basic and Advanced training programs?

4. The Dispatch Training program is separate from the Basic and Advanced programs, and is delivered only to Flex and Dispatch Officers, in addition to the Basic and Advanced training programs?

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1 Ken Cummins responded to Mr. Myhre's email that same day:

2 From: Cummins, Kenneth
3 Sent: Monday, July 11, 2011 8:27 PM
4 To: Myhre, Tony
5 Subject: Re: Training Programs question

6 Let's talk more in detail Tuesday afternoon, but the answer to your questions are
7 yes.

8 *See Exhibit 19.*

9 46. Mr. Myhre documented the preliminary concerns of his investigation to the
10 Securitas Branch Manager M'Liss Bernhard and asked for clarification regarding the scope of
11 the training required:

12 From: Myhre, Tony [mailto:tony.myhre@soundtransit.org]
13 Sent: Wednesday, July 13, 2011 4:32 PM
14 To: Mliss.Bernhard@securitasinc.com
15 Subject: Actionable items

16 M'Liss;

17 The attached data was compiled and is being transmitted to you at Ken's request,
18 after some issues related to new hire training came to light subsequent to the new
19 Fare Enforcement Officer that was just hired on to the account was placed in the
20 field within 1-2 days of his hire. Ken, Dave Draveling, Matt Camillone, Branden
21 Porter and Ed Frederick were involved in a dialogue that eventually led to Ken
22 indicating that this Officer should not be placed in to the field until his full course
23 of contractually mandated training is complete. Last week, a separate line of
24 questioning from me was initiated with Securitas Operations, as I observed this
25 Officer in the field on his second day and asked him what training he had

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1 completed, and I was aware he was only in day two of his training, including
2 orientation.

3 In order to compare my understanding of the contractually mandatory training
4 programs with the existing training modules for each individual unit (blue shirt,
5 FEO's and dispatch), I then sent an email to Dave and Ken (without getting
6 specific as to the reasoning for the line of questioning), asking to clarify Sound
7 Transit's expectations specific to each of the job classifications, as it relates to the
8 contract training outline that Ken provided me with. This input was then
9 compared with the existing training programs, available trainer hours and
10 operation, as to the deliverable mandatory pre-assignment training levels, which
11 are included in the Trainer Utilization spreadsheet. The client's expectation is that
12 the basic 40 hour training program, the advanced 40 hour training program, and
13 all job specific training programs be delivered to the security officer on a pre-
14 assignment basis, as is outlined specifically in the contract with Securitas, per Ken
15 Cummins.

16 The outcome of these events culminated in a meeting with Ken and Dave,
17 wherein I was directed to compile a list of actionable items of significance based
18 upon these findings (to date) for Ken's information and review. He directed me to
19 provide him with the list first for his review and discussion, which was late
20 yesterday afternoon. I compiled the information he requested (as much of this was
21 in preliminary states of compilation anyway) and submitted it to him just prior to
22 the close of business yesterday in the late afternoon. Ken reviewed the materials
23 this morning before several back to back meetings, and he then pulled me in to his
24 office and directed me to submit this to you for your review (without providing
25 me with much feedback).

Attached are several actionable items I have identified that can / should be
addressed immediately (or at least the processes initiated). I have limited the
scope of this document to issues of significance that have a liability, risk
management or major contract compliance implication. The remaining items are
cataloged and will be presented in the written needs / gap analysis documents,

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1 going forward. I can source each of these findings based up on my written notes,
 2 either in outline form or in specific, dated audit documents reflecting feedback on
 3 specific training programs I have attended.

4 Many of these 'action items' will impact the ability to effectively deliver new /
 5 augmented training programs that are identified and included in the change
 6 process for the training piece of this scope of work. It would seem prudent that I
 7 am integrated in to the change process to insure that whatever items are identified
 8 for final inclusion in a change process initiation plan are implemented within the
 9 scope of that plan / recommendations. Please let me know if you'd like to discuss
 10 these items in person or otherwise, outside of email. TRM

11 Tony R. Myhre | Project Manager
 12 Sound Transit / Securitas Security Services USA, Inc.
 13 401 S Jackson Street | Seattle, WA 98104
 14 (206) 398-5346 office
 15 tony.myhre@soundtransit.org
 16 "No One of Us is as Good as All of Us"

17 See Exhibit 20.

18 47. M'Liss Bernhard initially responded on July 14, 2011, by stating that she would
 19 get back in touch with Mr. Myhre.

20 48. Securitas Training Manager, Matt Camillone and Josiah Durham, Securitas
 21 Training Officer, both confirmed in private conversations with Mr. Myhre contemporaneous to
 22 these events that they had heard from Ms. Bernhard and "she was pissed" about Mr. Myhre's
 23 audit.

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1 49. Subsequently, on or about July 18, 2011, M'Liss Bernhard called Mr. Myhre to a
 2 meeting at her Bellevue office. M'Liss Bernhard told Mr. Myhre at this meeting that there were
 3 no training inadequacies. M'Liss Bernhard stated that the guards had been trained in the field,
 4 but that the training records 'could not be located'.

5 50. Mr. Myhre also discussed the inadequate training his audit uncovered with
 6 Securitas Training Manager, Matt Camilllone, and Josiah Durham, Securitas Training Officer.
 7 Both agreed that the Securitas training outlines at that time were failing to comply with the
 8 contractual training mandates. They also both confirmed that their concerns had been raised with
 9 M'Liss Bernhard and that they had asked her to provide additional resources to train guards and
 10 personnel. M'Liss Bernhard responded to both that "we have enough resources devoted to
 11 training" the security guards and personnel.

12 51. Mr. Myhre continued his analysis and audit of the level of training of Securitas
 13 personnel on the Sound Transit project.

14 52. Mr. Myhre provided a first draft of the audit results to Kenneth Cummins in the
 15 first week of October, 2011. Mr. Cummins instructed Mr. Myhre to provide an advanced copy,
 16 and the only copy, to him, and Mr. Cummins instructed Mr. Myhre to not inform Securitas that
 17 he was giving Mr. Cummins an advanced copy. Mr. Cummins stated to Mr. Myhre that he
 18 wanted to review it and discuss it before it was submitted to Securitas. Mr. Myhre did as
 19 instructed and did not retain a copy.

20
 21 COMPLAINT - 28

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53. After Mr. Cummins' review of the first draft of the audit, he asked Mr. Myhre to sanitize several points of information related to M'Liss Bernhard and Mr. Myhre's assessments of her activities, levels of competency (lack of military or security background), and information about billing and equipment issues that directly related to her, which included information that showed Securitas billing for services not provided: i.e. billing for untrained guards and personnel. Mr. Cummins retained a hard copy of this first draft.

54. Mr. Myhre provided Securitas (M'Liss Bernhard) the second draft of the audit report in hard copy form on or about the third week of November 2011, sanitized to the specifications of Mr. Cummins and reflecting some more accurate formulas for determining trainer utilization versus training hours requirements based on turnover analysis. This version is attached as **Exhibit 21** dated October 17, 2011.

55. The second draft of the audit report was further sanitized, this time by Securitas, who asked Mr. Myhre to remove specific information in the report about Securitas taking retaliatory action against another manager, Matthew Camillone, who provided Mr. Myhre with information pertaining to the massive failure to complete the contractually mandated training.

56. A third and final sanitized audit report was submitted to Mr. Cummins and Securitas on December 5, 2011. *See Exhibit 22.* The final sanitized audit report stated that there was lack of training as follows:

- Improvised Explosive Devices – 2 hours of training not being performed;

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- Right of Way Certification – 3 hours of training that a scheduling conflict is preventing from being performed;
- Sound Transit Orientation and Policies – 2 hours of training not being performed;
- Railroad Safety: 49 CFR 239 training – 2 hours of training performed via only PowerPoint review, no personal instruction, before test is given;
- Railroad Safety: BNSF safety course – 2 hours of training performed via only PowerPoint review, no personal instruction, before test is given;
- Railroad Safety: fire extinguisher course – 1 hour of training not being performed;
- Defensive Driving Course – 8 hours of training not being performed (Drive for Life is less than 1 hour of training and is covered in orientation);
- Traffic Control and Parking Lot Security – 4 hours of training being covered exclusively in ACT as part of the basic program; there is no separate curriculum in the Advanced Program;
- Sound Transit Security Incident Reporting – 2 hours of training. System is not in use yet; otherwise this is being covered exclusively in ACT or Dispatch/FEO specific training courses;
- NIMS/ICS Course - 2 hours of training being performed via only PowerPoint review, no personal instruction, before self-administered NIMS 800 test is taken;
- DHS/JTATT Terrorism Awareness – 8 hours of training not being performed;
- Cultural Diversity – 4 hours of training has not been performed in over two years;
- Observation Skills/Surveillance Detection – 4 hours of training; program has not yet been established;
- Survival Skills – program has not yet been established;

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- Tactical Communications – 8 hours of training; program has not yet been established;
- Practical Exercises – 8 hours of training; program has not yet been established;
- Additional/Continuing Education Hours – 16 hours per annum required; there is currently no outlined/proscribed curriculum;
- Sound Transit ADA training – not currently performed due to scheduling conflicts.

57. Mr. Myhre was ultimately fired for preparing this audit report with its recommendations to bring Securitas into compliance, and for resisting requests to sanitize the audit report further. The retaliatory conduct is explained below in Section H of this Complaint.

G. Relationship between Mr. Cummins and Securitas

58. Mr. Cummins told Mr. Myhre that Securitas offered him a position as a President of a New Security Branch within Securitas around the time Securitas was awarded the \$14,000,000 contract modification in April, 2011. Mr. Cummins further stated that the terms of the offer included a salary in excess of \$150,000 and a position anywhere in the United States that Mr. Cummins would like to live and work. Brandon Porter, who at the time was a Fare Enforcement Manager for Securitas and was later promoted to Branch Manager, reported this same information to Mr. Myhre.

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59. Other persons with knowledge of Mr. Cummins job offer include: Matt Camillone, Rick Sawyer (former Area Vice President), Kimberly Mack and M'Liss Bernhard of Securitas, and Kelly Stone, Regional President for Securitas.

H. Fallout between Relator and Securitas: Tony Myhre is Blacklisted after Talking to Securitas about the Training Issues

60. A memo was written in July 2011 by Securitas employee Barbara Moore, instructing Securitas Officers to stop talking to Mr. Myhre. The existence of the original memo was related to Mr. Myhre by Securitas Officers Caleb Verduin and Chris Hansen in early 2012. Tony Myhre raised this issue with Human Resources at Securitas:

From: Tony.Myhre@securitasinc.com [mailto:Tony.Myhre@securitasinc.com]
 Sent: Thursday, March 08, 2012 3:07 PM
 To: Kimberly.Mack@securitasinc.com
 Subject: FW: Requested Statement - CONFIDENTIAL
 Importance: High
 Sensitivity: Confidential

Kim;

As background as to why I am emailing you, please see the below statement, provided to Ed Frederick via email at his request following an in person conversation that I had with him, wherein I outlined the subject matter detailed herein.

The concern with the conversation that Mr. Carter had with Officer's Verduin and Gill extends to a question as to whether Mr. Carter was issuing this advice / order based upon his own fruition & initiative, or if Mr. Carter was ordered to do so by his supervisor, Barbara Moore.

COMPLAINT - 32

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1 As of this morning, Ed Frederick was engaged in a process of looking at the
 2 Sound Transit Nextel telephone bill, calling numbers and asking people who they
 3 were. This was related to me both by personnel who overheard the conversations,
 4 and also by people who Mr. Frederick called. As this is the first time in the 9
 5 months I have been contracted here that such as an exercise has been undertaken
 (that I am aware of), one can only logically draw a correlation between my report
 to Ed and the sudden interest in who I am calling or receiving calls from on the
 Sound Transit client telephone issued to me. Obviously this is speculation on my
 part and may or may not be related.

6 Furthermore, Barbara Moore initiated a telephone call to Officer Verduin this
 7 morning, wherein she asked him what had happened with Supervisor Carter, but
 8 also asking Officer Verduin why it was that he was even talking to me in the first
 9 place, as I was only 'here to rewrite the post orders'. Barbara then ordered Officer
 Verduin to produce a written statement to her via email about what I had done,
 said and asked, and to spell out what Mr. Carter had told him as well.

10 Officer Verduin followed that up with a phone call to me, asking what was going
 11 on, and expressing concerns over potential retaliation from Ed and Barbara for his
 12 having reported the conversation / order from Mr. Carter to me. It is of note that
 13 during my time with Officer Verduin on Friday, 3/2/12; that I did not engage in a
 14 Q&A with the Officer about the account or its leadership, rather I was focused on
 this phase of my scope of work, which relates to the new post orders for the
 account. I believe that any subsequent statements from Officer Verduin will
 support that assertion.

15 The concerns that I have with all of this are as follows:

16 1. As I related to Ed Frederick that there was a concern about this order given by
 17 Mr. Carter possibly having come from Barbara Moore, as this is conceivably her
 18 position on the subject matter given her verbal statements to Officer Verduin, than
 why would Ed involve Barbara in conducting an investigation / review about this
 report?

19 2. Why the sudden interest in the phone records, immediately preceding a report
 20 of this nature? This lends itself to a thought process that Ed himself may harbor

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1 resentment or reservations about Security Officers talking to me (which begs the
 2 question of whether this order actually may have come from or been implied by
 3 him), which is part of my express written mandate, to field information from the
 4 staff on the account so as to engage in this improvement and change process.
 Negating the ability of the Officers to talk with me and produce ideas and
 information is directly contradictory to the nature of my scope of work and
 prohibitive of the client's directives and goals as it relates to my assignment here.

5 3. It is interesting that during a conversation with a security officer about a report
 6 that a supervisor was ordering officers not to talk with me and be involved in this
 7 process, that Barbara would make the statements that she did essentially
 8 reinforcing her desire that Officers not speak to me and comply with this client
 driven process contained within my scope of work, along with subsequent verbal
 and written orders from the client.

9 4. Specific to Officer Chris Hanson, on 2/28/12, I witnessed an interaction
 10 between him and Ed Frederick wherein Ed was noticeably upset, slamming his
 11 hand on a door (also observed by the dispatchers on duty, as it was the door to the
 12 SOC that he slammed his hand against) and speaking rather tersely towards the
 13 Officer. Officer Hanson indicated to me that he and Ed spoke again (possibly on
 14 2/29/12), and that Ed apologized to him, but that at the same time, Ed said that
 15 'Tony is a pain in my ass and he's making things very difficult for me', apparently
 16 explaining his level of frustration, but at the same time, sending a message to this
 security officer that his having supported the client driven scope of work, by
 request - due to his in depth knowledge of job sites and the physical layout of
 posts along the Central Link alignment, that he was somehow making Ed's job
 more difficult, and reinforcing the statements that Officer Hanson indicates that
 he has seen in writing with regards to a prohibition on Officers talking with me in
 the performance of my duties, as outlined in the written accounting below.

17 5. I am deeply concerned by these behaviors, and what I perceive to be a
 18 furtherance of the hostile work environment issues I have reported previously,
 19 caused and exacerbated by the actions and statements of Ed Frederick, Barbara
 20 Moore and De'Angelo Carter. I am concerned for the integrity of my employment
 / scope of work, as I fear retaliation from them, by them or through them, as it
 relates both to my ability to perform my job duties effectively because of these

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1 alleged statements made to Security Officers, but also in the sense that I fear for
2 my job.

3 6. To another degree, because of the behaviors I have seen Ed Frederick display
4 over time, I also fear for my personal safety as well. I am deeply concerned by the
5 actions and behaviors of Ed Frederick, as on more than one occasion when I have
6 spoken with him in person, he has clenched his fists and tightened his jaw and his
7 face got very red, all of which I have been trained to perceive as pre-attack /
8 assaultive indicators, which is backed up by over 20 years of experience in
9 physical security and Federal law enforcement / security services, collectively.
10 The simple fact that these were the behaviors that I again witnessed on 3/2/12,
11 lead me to believe that despite a period of time where these behaviors seemed to
12 diminish, that the underlying issues remain, which leads me to believe based upon
13 my training and experience with hostile work environment and workplace
14 violence situations, that there is a significant likelihood that Ed Frederick will
15 again assault a member of this or the clients staff, and potentially me.

16 I am available at your discretion to provide any necessary clarification or
17 information. Thank you for your time and consideration in review of this email.
18 TRM

19 Tony R. Myhre | Project Manager
20 Sound Transit / Securitas Security Services USA, Inc.
21 401 S Jackson Street | Seattle, WA 98104

22 ...

23 **See Exhibit 23.**

24 61. Securitas' Human Resources employee Ms. Mack responded by telling Mr.
25 Myhre that he was too sensitive.

62. Mr. Myhre also raised this issue with Dave Draveling and Kenneth Cummins of
Sound Transit in face to face meetings. Mr. Myhre also emailed Ed Frederick, the Sound Transit

COMPLAINT - 35

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1 Account Manager for Securitas, who responded that he would “be in touch.” No follow up
2 occurred. *See Exhibit 24.*

3 63. In early April, 2012, M'Liss Bernhard, Branch Manager for Securitas and Nicole
4 Krantz, Regional Vice President of Human Resources met with Tony. They told him they had
5 run out of money to pay Tony: “There is a budget shortfall.”

6 64. On April 18, 2012, Marcia Walker, Sound Transit Executive Assistant to the
7 Board of Directors met Mr. Myhre by happenstance. They discussed his audit report. Ms.
8 Walker was surprised both that an audit had been performed and that she had not been given a
9 copy of the audit. Ms. Walker inquired into obtaining a copy of Mr. Myhre's audit report. Ms.
10 Walker requested a meeting between Mr. Myhre, Kenneth Cummins, and herself to review the
11 audit findings, as she indicated that it was critical for review by the Sound Transit Board of
12 Directors.
13

14 65. Mr. Myhre asked Ken Cummins if they could provide a copy of his audit report to
15 Ms. Walker. Mr. Cummins said “Hell no, we are not giving her the report.” Brandon Porter,
16 Securitas Fare Enforcement Manager (now Branch Manager), was also present at this meeting.

17 66. On April 19, 2011, M'Liss Bernard asked Mr. Myhre to report to the Bellevue
18 Securitas office the following morning, and to deliver the Sound Transit contract, the hard drive
19 from his Securitas computer, and any other related materials in his possession.
20

21 COMPLAINT - 36

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1 67. On April 20, 2012, Securitas terminated Mr. Myhre:

2 Dear Tony:

3 It is with regret that I must inform you that your position as a Project Manager for
4 the Sound Transit account is being eliminated and your employment is being
5 separated. Your position will not be replaced. Sound Transit notified Securitas
6 USA that the decision was made for budgetary and cost cutting measures.

....

6 See **Exhibit 25**.

7 68. Mr. Myhre does not know if Ms. Walker or the Sound Transit Board ever saw his
8 audit report.

9 **I. False and Fraudulent Billing**

10 69. Under the Contract, Securitas was permitted to bill monthly only for services
11 authorized and actually provided. However, Securitas was billing for untrained and undertrained
12 security guards, advanced security guards, supervisors and other personnel in violation of the
13 required deliverables.

14 70. Examples of Securitas billings are attached hereto. See **Exhibit 26**.

15 **J. March 2013: New Security Contractor Proposals**

16 71. In March 2013, Sound Transit put out a RFP for a new security vendor, under
17 Solicitation RP 0015-13 – Description. See **Exhibit 27**. Mr. Cummins has indicated it is his
18 strong preference to retain Securitas. Dave Draveling and Brandon Porter, along with Mr.
19

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1 Myhre, have heard his preference to retain Securitas even after the audit reports demonstrated
2 inadequate training of guards and personnel.

3 V. CAUSES OF ACTION

4 Count I: The Federal False Claims Act

5 72. Paragraphs 1 through 71 are re-alleged as though fully set forth herein.

6 73. The False Claims Act, as amended by the Fraud Enforcement and Recovery Act
7 of 2009 (FERA), Pub. L. 111-21, § 4(f), 123 Stat. 1617, 1625 (2009), provides that a person is
8 liable to the United States government for three times the amount of damages the government
9 sustains because of the act of that person, plus a civil penalty, for each instance in which the
10 person “knowingly presents, or causes to be presented, a false or fraudulent claim for payment or
11 approval.” 31 U.S.C. § 3729(a)(1)(A) (2009). Prior to the FERA amendments, the FCA
12 provided that a person is liable to the United States government for each instance in which the
13 person “knowingly presents, or causes to be presented, to an officer or employee of the United
14 States Government...[a] false or fraudulent claim for payment or approval.” 31 U.S.C. §
15 3729(a)(1) (2006).
16

17 74. The FCA defines the term “claim” to mean “any request or demand, whether
18 under a contract or otherwise, for money or property and whether or not the United States has
19 title to the money or property, that (i) is presented to an officer, employee, or agent of the United
20

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1 States; or (ii) is made to a contractor, grantee, or other recipient, if the money or property is to be
 2 drawn down or used on the Government's behalf or to advance a Government program or
 3 interest, and if the United States Government (i) provides or has provided any portion of the
 4 money or property requested or demanded; or (ii) will reimburse such contractor, grantee, or
 5 other recipient for any portion of the money or property which is requested or demanded..." 31
 6 U.S.C. § 3729(b)(2)(A) (2009).

7 75. As amended by FERA, the FCA also makes a person liable to the United States
 8 government for three times the amount of damages which the government sustains because of the
 9 act of that person, plus a civil penalty, for each instance in which the person "knowingly makes,
 10 uses, or causes to be made or used, a false record or statement material to a false or fraudulent
 11 claim." 31 U.S.C. § 3729(a)(1)(B) (2009). The FCA, prior to the FERA amendments, provided
 12 that a person is liable to the United States government for each instance in which the person
 13 "knowingly makes, uses, or causes to be made or used, a false record or statement to get a false
 14 or fraudulent claim paid or approved by the Government." 31 U.S.C. § 3729(a)(2) (2006).

15 76. The FCA defines the terms "knowing" and "knowingly" to mean that a person,
 16 with respect to information: (1) "has actual knowledge of the information"; (2) "acts in deliberate
 17 ignorance of the truth or falsity of the information"; or (3) "acts in reckless disregard of the truth
 18 or falsity of the information." 31 U.S.C. § 3729(b)(1)(A) (2009). The FCA further provides that
 19
 20

21 COMPLAINT - 39

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1 “no proof of specific intent to defraud” is required. 31 U.S.C. § 3729(b) (2006); 31 U.S.C. §
2 3729(b)(1)(B) (2009).

3 77. Mr. Myrhe, on behalf of the United States, alleges that Securitas violated the FCA
4 by “knowingly” submitting and/or causing the submission of false claims for payment to the
5 government for untrained and undertrained guards and personnel when Securitas was
6 contractually required to provide fully trained guards and personnel. These claims for payment
7 were false because Securitas submitted claims for payment on a monthly basis for personnel
8 hours with a labor rate that included training. Yet, Securitas knowingly submitted false claims
9 for payment under the Sound Transit-Securitas contract because it had failed to train the
10 personnel with both pre and post assignment training. Thus, Securitas billed a rate for trained
11 personnel and security guards and knowingly provided untrained and undertrained personnel and
12 security guards.

13
14 78. Securitas also knowingly presented, or caused to be presented, to an officer or
15 employee of the United States government, false or fraudulent claims for payment or approval on
16 a monthly basis, in violation of the False Claims Act, 31 U.S.C. § 3729(a)(1) (2009), formerly 31
17 U.S.C. § 3729(a)(1) (2006), specifically, for fraud involving nonconforming services because the
18 government contractor falsified documentation that all materials meet the contract specifications.
19
20

21 COMPLAINT - 40

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1 79. Because of Securitas' acts, the United States sustained damages in an amount to
2 be determined at trial and, therefore, is entitled to treble damages under the False Claims Act,
3 plus civil penalties of not less than \$5,500 and up to \$11,000 for each monthly violation.

4 80. As of December 12, 2008, Federal Acquisition Regulation ("FAR") amendments
5 require a government contractor to self-disclose its own or its employees' violations of criminal
6 conduct, relating to fraud, conflict of interest, bribery or gratuities, or the FCA. The offenses
7 must have occurred "in connection with the award, performance, or closeout" of the contract or
8 subcontract. False statements are the most commonly charged offense in procurement fraud
9 cases, and are used to penalize common forms of fraudulent procurement activity.

10 81. The FAR requires a contractor to timely disclose when it has credible evidence to
11 believe a triggering violation has occurred. The disclosure typically should occur before a
12 complete and thorough investigation is completed. Disclosure should be made within thirty days
13 in order to take advantage of the provision in the FCA that rewards timely self-disclosures with a
14 limit of *double* rather than treble damages.

15 82. The disclosure should specifically state that it is being made in accordance with
16 the mandatory disclosure provisions of the FAR Section 52.203-13, and that the contractor has
17 credible evidence that an offense has occurred subject to the mandatory disclosure provisions.
18 This includes when a contractor learns that the government has overpaid on a contract. The
19

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21 COMPLAINT - 41

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disclosure should identify the offense, provide general, preliminary factual information, and a description of the damages. Securitas has violated the disclosure requirements and these violations are evidence of fraud under the FCA.

Count II: False Statements

(31 U.S.C. § 3729(a)(1)(B) (2009), formerly 31 U.S.C. § 3729(a)(2) (2006))

83. Paragraphs 1 through 71 are re-alleged as though fully set forth herein.

84. Securitas knowingly made, used, or caused to be made or used, a false record or statement material to a false or fraudulent claim, to get the United States to pay or approve false or fraudulent claim, and/or get the United States to pay or approve false or fraudulent claims, in violation of the False Claims Act, 31 U.S.C. § 3729(a)(1)(B) (2009), formerly 31 U.S.C. 3729(a)(2) (2006).

85. Because of the Defendant's acts, the United States sustained damages in an amount to be determined at trial and, therefore, is entitled to treble damages under the False Claims Act, plus civil penalties of not less than \$5,500 and up to \$11,000 for each monthly violation.

Count III: Wrongful Termination under 31 U.S.C. § 3730(h)

COMPLAINT - 42

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86. Paragraphs 1 through 71 are re-alleged as though fully set forth herein. Mr. Myhre was an employee of Securitas Security Services USA, Inc.

87. In his audit report, Mr. Myhre repeatedly made recommendations to bring Securitas into compliance with the mandated contract training requirements:

Section 3.5 F of the contract between Securitas and Sound Transit outlines the training requirements for Security Officers, Dispatchers and Fare Enforcement Officers (see also amendments to the contract). The Training unit was tasked by the Branch Manager with breaking down the training requirements in to modules, which reflected the mandatory training required by the client for each divisions Officers. The audit of these courses and the status of the deliverables were outlined in previous sections, beginning on page 13 of this document. **This section will focus on recommendations related to the effectiveness of the current programs, based upon the experience of the Project Manager as a State Certified & Licensed Private Security Guard Trainer, combined with over 19 years of formalized training experience in the protective services industry, and a combination of best and recommended practices reviews initiated to assess alternative program availability.**

Due to the disconnects between this clients expectations of its contracted Security Officers, and the orientation training that Officers go through being inconsistent in the delivery of critical information related to the use of force and other items outlined previously in this document, **it is recommended that the Branch Training and Development Manager (at the very least) be integrated in to the delivery of the accounts training objectives, provided with an orientation session with the client, and exposed to the accounts duty performance through a 'job shadow' scheduled at locations such as Fare Enforcement, TIBS, FWTC and the Kent Station. This would suffice to allow for the person in this position to better understand the duties and expectations of Security Officers assigned to this client location, and for the training of those personnel to be performed in such a way so as to fall in line with the clients expectations.**

COMPLAINT - 43

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As a result of the compliance issues related to the administration of contractually mandated training, **it is recommended that a detailed audit of the training function is performed on at least a quarterly basis, so as to insure that contractual training requirements are being met. This is not withstanding the previously outlined need for additional training staff dedicated to the Sound Transit account, in order to facilitate compliance by insuring that a sufficient number of training hours are available to satisfy the contractual obligations.**

With respect to the training program employed, and in order to insure contractual obligations are met, another means by which this goal can be accomplished is through the utilization of persons trained and certified as Field Training Officers (or FTO's). While an FTO program exists in the Fare Enforcement division, these Officers are not specifically trained in supervisory techniques, or given any additional training in the skill set or specialization of being a trainer. What is relied upon is the individual's previous training and experience, which does not create inherent risk reduction in to the training program.

The recommendation is to assess begin the development of a documented program of assessing personnel within each division (outside of Fare Enforcement, where this has already been done) who would be a good fit for the positions of FTO. Once developed, place those individuals in a program to certify them as entry level supervisors and State certified trainers (including any necessary specialty certifications), so as to reduce the risk exposures associated with those persons performing contractually mandated training for the accounts personnel. Once the FTO's have been trained, they could then take an appropriate measure of the training burden off of the training division, by performing in service, post assignment in the field, including the periods where the employee has completed period assignment training, and is just being assigned a new post. This window is outlined in the contract as being 32 hours.

FTO's could then also be tasked with performing any non-specialized / non-certified training in the post assignment period, again, alleviating the burden from the training division, so that the training divisions focus can

COMPLAINT - 44

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1 **remain on pre-assignment training and annual refresher training for**
 2 **existing personnel.** An example of an FTO program is attached for review and
 3 consideration, as is the Sound Transit SOP for the creation and administration of
 4 an FTO program within the Fare Enforcement Division. This SOP stops short of
 5 outlining an accreditation or training program to “certify” the FTO to perform
 6 his/her duties, which is the focus of this recommendation, in addition to the
 7 expansion of this framework, subsequent to the certification process, throughout
 8 the other divisions on the account.

9 **Further to the risk management portion of this recommendation, the**
 10 **accounts training personnel should become State certified trainers.** While
 11 the State dictates no specific curriculum mandates, the subject matter covered in
 12 the pre-assignment training program does meet the standards of the ASIS
 13 Private Security Officer Training and Selection Guidelines, which has been
 14 widely accepted throughout the industry as a standard for training and selection
 15 programs, and in fact is the model upon which the contract with Sound Transit
 16 for security services and the associated selection and training service levels
 17 were based. It is of note that Securitas management was involved in the drafting
 18 and creation of these guidelines (see this document for additional information).
 19 In section 11.3 of this document, the guideline indicates that “All entities or
 20 persons providing security officer training should also be certified by a
 21 regulatory body.”

22 Having this certification, which is a low cost, written tested program
 23 administered by the Department of Licensing, brings credibility and risk
 24 reduction to the training program by making the hours delivered by these
 25 persons compliant the guidelines upon which the training program for this
 contract was based, and with the State’s continuing education requirements,
 which while the Sound Transit program is obviously richer than the State’s pre
 and post assignment training requirements, will help to minimize liability by
 insuring that all persons delivering training to the accounts personnel in the pre-
 assignment phase are accredited by the State of Washington and fall within the
 full scope of the guidelines outlined in the ASIS piece.

As has been shown through the results of this review, there are significant
 gaps in the delivered training that is called for in the client contract, and

COMPLAINT - 45

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conversely, there are also courses called for in the contract which have not yet had a curriculum developed and implemented. It is the recommendation of the Project Manager that a committee be stood up to formulate processes by which to insure the timely and complete administration of the accounts training program, and to insure that the curriculum gaps are filled with accredited programs, prior to a date determined by the Chief Security Officer of the agency.

Exhibit 22, pgs. 42-43. (Bold emphasis added).

88. The United States Congress added a whistleblower protection provision to the False Claims Act in 1986, and amended that provision in 2009 to provide additional protection to whistleblowers. This provision now states:

(h) Relief from retaliatory actions.

(1) In general. Any employee, contractor, or agent shall be entitled to all relief necessary to make that employee, contractor, or agent whole, if that employee, contractor, or agent is **discharged**, demoted, suspended, threatened, harassed, or in any other manner discriminated against in the terms and conditions of employment **because of lawful acts done by the employee, contractor, agent or associated others in furtherance of an action under this section or other efforts to stop 1 or more violations of this subchapter.**

(2) Relief. Relief under paragraph (1) shall include reinstatement with the same seniority status that employee, contractor, or agent would have had but for the discrimination, **2 times the amount of back pay, interest on the back pay, and compensation for any special damages sustained as a result of the discrimination, including litigation costs and reasonable attorneys' fees.** An action under this subsection may be brought in the appropriate district court of the United States for the relief provided in this subsection.

31 U.S.C. § 3730(h). (Bold emphasis added).

COMPLAINT - 46

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1
2 89. Securitas committed acts of harassment and discrimination against Mr. Myhre in
3 the terms and conditions of employment and terminated Mr. Myhre because he attempted to stop
4 Securitas from violating the False Claims Act through his recommendations above. Therefore,
5 Securitas is liable to Mr. Myhre for damages in an amount to be proven at trial, which damages
6 include two times the amount of back pay, interest on the back pay, and compensation for any
7 special damages sustained as a result of the discrimination, including litigation costs and
8 reasonable attorneys' fees. 31 U.S.C. § 3730(h)(2).

9 90. Mr. Myhre's termination contravened a clear mandate of public policy: Securitas
10 unlawfully terminated Mr. Myhre for his efforts to bring the fraud to light, his refusal to
11 participate in Securitas' illegal conduct, and his attempt to perform his public duty.

12 91. Securitas' conduct contravened the letter and purpose of a statutory and
13 regulatory provision or scheme, *i.e.*, the False Claims Act, 31 U.S.C. § 3729, *et seq.*

14 92. Discouraging the conduct in which Mr. Myhre engaged would jeopardize this
15 public policy.
16

17 93. Mr. Myhre was dismissed due to his public-policy-linked conduct.

18 94. Defendant cannot offer an overriding justification for the dismissal.

19 95. Mr. Myhre experienced emotional distress due to his dismissal.
20

21 COMPLAINT - 47

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96. Mr. Myhre has suffered damages in an amount to be proven at trial.

VI. PRAYER FOR RELIEF

WHEREFORE Plaintiff United States of America, through Relator Tony Myhre, demands judgment against Defendant Securitas Security Services USA, Inc. as follows:

A. Under the First Cause of Action (False Claims Act), for treble damages as established at trial, plus a penalty of \$5,500 to \$11,000 for each false claim established at trial.

B. For damages, including double damages, back pay, front pay, and emotional harm under Claim III.

C. Such other and further relief as the Court may deem just and proper, together with interest and costs.

D. For fees and costs pursuant to the False Claims Act.

DATED this 29th day of March, 2013.

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COMPLAINT - 48

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